

**PUBLIC SAFETY DEPARTMENT[661]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby amends Chapter 302, “State Building Code—Accessibility of Buildings and Facilities Available to the Public,” Iowa Administrative Code.

Iowa Code section 103A.7 requires that the State Building Code include reasonable provisions for “the accessibility and use by persons with disabilities and elderly persons, of buildings, structures, and facilities which are constructed and intended for use by the general public.” This Iowa Code section further provides that the requirements for accessibility are to be “consistent with federal standards for building accessibility.” The federal standards being referenced were originally codified in the Americans with Disabilities Act Accessibility Guidelines, published in 1994, and since 2004 these guidelines have served as the basis for Iowa’s accessibility requirements for buildings and facilities available to the public.

Last year, the U.S. Department of Justice adopted new accessibility guidelines published as the 2010 Standards for Accessible Design. Under federal regulations, compliance with the federal requirements for accessibility of buildings and facilities available to the public will be required as of March 15, 2012. The amendments adopted herein retain the required consistency between Iowa requirements for accessibility of buildings and facilities available to the public and the parallel federal requirements and consequently avoid the possibility of construction projects’ incurring significant additional costs in order to ensure compliance with two separate sets of standards for accessibility.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9922B** on December 14, 2011. There was a public hearing on the proposed amendments held on January 3, 2012. No comments were received at the public hearing. However, several comments were received from operators of swimming pools expressing concern about the impact of the new requirements on swimming pools, especially those requirements having to do with provision of electronic lifts to assist persons in wheelchairs entering and exiting a pool.

While the Building Code Commissioner is cognizant of and sympathetic to concerns raised by operators of swimming pools, the Commissioner also believes that these concerns arise from misunderstanding about the scope and application of these amendments. Accessibility requirements are imposed both by federal and state law. The new requirements are slated to go into effect in federal law and therefore be binding on owners and operators of public facilities and public accommodations on that date, regardless of any action by the state Building Code Commissioner. In addition, the accessibility requirements in the State Building Code apply to construction going forward from the effective date and are not retroactive to any existing facility unless the facility undergoes major remodeling or renovation. Consequently, the adoption of the new requirements by the Building Code Commissioner does not itself trigger a need for retrofitting of a swimming pool or any other public facility or accommodation.

Two explanatory notes have been added to rule 661—302.3(103A,104A) since publication of the Notice of Intended Action. One of these notes reflects the comments noted above and explains the applicability of the new requirements to construction projects after the effective date of the requirements. The other note explains that designers and build project owners who choose to use the option of following the accessibility requirements contained in the International Building Code, 2009 edition, remain responsible for compliance with applicable federal requirements, whether or not a specific requirement is included in the International Building Code.

Provisions of the State Building Code are not subject to waiver, but instead are subject to the process for considering requests for alternate materials or methods of construction as provided in Iowa Code section 103A.13.

No fiscal impact on the state is anticipated.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 103A.7, 103A.9, and 104A.1.

These amendments will become effective on March 15, 2012.

The following amendments are adopted.

ITEM 1. Amend rule 661—302.1(103A,104A) as follows:

**661—302.1(103A,104A) Purpose and scope.** Rules 661—302.1(103A,104A) through 661—302.20(103A,104A) are intended to ensure that buildings and facilities used by the public, other than places of worship, are accessible to, and functional for, persons with disabilities. ~~Rules 661—302.1(103A,104A) through 661—302.11(103A,104A) apply~~ Rule 661—302.3(103A,104A) applies statewide to new construction, of buildings and facilities available to the public and to renovation, and rehabilitation projects on existing buildings and facilities when local or state building codes require compliance with standards for new construction. Rule 661—302.20(103A,104A) applies statewide to construction of multiunit residential buildings.

~~Some requirements contained in rules 661—302.1(103A,104A) through 661—302.11(103A,104A) are not readily enforceable through the plan review process and may not be enforced through this means. Any of the requirements may be enforced during inspections in jurisdictions which inspect construction projects for compliance with building code requirements. Owners and operators of buildings and facilities subject to the provisions of rules 661—302.1(103A,104A) through 661—302.11(103A,104A) are responsible for compliance with any applicable requirements contained within these rules regardless of whether those requirements are enforced through plan reviews or inspections.~~

~~Rules 661—302.2(103A,104A) through 661—302.11(103A,104A) are~~ NOTE A: Although rule 661—302.2(103A,104A) is based upon the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) 2010 ADA Standards for Accessible Design and ~~in many instances adopt~~ adopts the language of ADAAG the 2010 ADA Standards for Accessible Design by reference. ~~However,~~ and rule 661—302.20(103A,104A) is based upon the requirements of the federal Fair Housing Act, state and local building officials charged with enforcement of these rules 661—302.2(103A,104A) through 661—302.11(103A,104A) are unable to warrant the acceptance of any interpretation of ADAAG language approval of design or construction by federal agencies or any other state. A state or local official's decision to approve a building plan under ~~rules 661—302.2(103A,104A) through 661—302.11(103A,104A)~~ these rules does not prevent the federal government or another state from making a different decision under ADAAG or other applicable law, notwithstanding any similarities among such laws.

~~NOTE A: See rule 661—302.20(103A,104A) for specific requirements within the individual dwelling units and public and common-use spaces of multiple dwelling unit buildings.~~

NOTE B: Other federal and state laws address requirements for accessibility for persons with disabilities and may be applicable to buildings and facilities subject to rules 661—302.1(103A,104A) through 661—302.20(103A,104A). Nothing in these rules should be interpreted as limiting the applicability of other provisions of state or federal law. These provisions include, but are not limited to, the following:

1. Iowa Code chapter 216, the Iowa civil rights Act of 1965.
2. Iowa Code chapter 216C, which enumerates the rights of persons who are blind or partially blind and persons with physical disabilities.
3. Iowa Code chapter 321L and 661—Chapter 18, which relate to requirements for parking for persons with disabilities.
4. The federal Architectural Barriers Act of 1968 (Public Law 90-480).
5. The federal Rehabilitation Act of 1973 (Public Law 93-112).
6. The federal Fair Housing Act of 1968 (Public Law 90-284), the federal Fair Housing Amendments Act of 1988 (Public Law 100-430), and related regulations, including 24 CFR 100, Subpart D.

ITEM 2. Rescind rule 661—302.2(103A,104A) and adopt the following new rule in lieu thereof:

**661—302.2(103A,104A) Definitions.** The following definitions are adopted for purposes of rules 661—302.1(103A,104A) through 661—302.20(103A,104A).

“*ADA*” means the federal Americans with Disabilities Act, Public Law 101-336.

“*ADAAG*” means Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, 28 CFR Part 36, Appendix A, as revised through July 1, 1994.

“*ADASAD 2010*” means 2010 ADA Standards for Accessible Design, published by the U.S. Department of Justice, September 15, 2010. Included in the publication are accessibility standards for state and local government facilities and accessibility standards for public accommodations and commercial facilities.

NOTE: Copies of ADASAD 2010 and additional explanatory material may be downloaded from <http://www.ada.gov/regs2010/ADAREgs2010.htm>.

“*IBC 2009*” means the International Building Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041.

ITEM 3. Rescind rule 661—302.3(103A,104A) and adopt the following new rule in lieu thereof:

**661—302.3(103A,104A) Accessibility of buildings and facilities available to the public.** Buildings and facilities which are available to the public, other than places of worship, shall comply with one of the following:

**302.3(1)** Applicable provisions of ADASAD 2010, or

**302.3(2)** IBC 2009, Chapter 11 and applicable accessibility provisions contained in IBC 2009.

NOTE 1: Approval of construction plans based upon compliance with the applicable provisions of the International Building Code, 2009 edition, as provided, does not relieve the designer, builder, building owner, or building operator from responsibility under federal law to comply with all applicable provisions of the 2010 ADA Standards for Accessible Design.

NOTE 2: Amendments to requirements contained in the state of Iowa building code do not apply retroactively to existing construction. New amendments to the state building code apply only to construction which occurs on or after the effective date of the amendments.

ITEM 4. Rescind and reserve rules **661—302.4(103A,104A)** to **661—302.11(103A,104A)**.

ITEM 5. Amend the implementation sentence after rule **661—302.11(103A,104A)** as follows:

Rules 661—302.1(103A,104A) through 302.11(103A,104A) to 661—302.3(103A,104A) are intended to implement Iowa Code sections 103A.7, 103A.9, and 104A.1.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/12.